INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Argument	5
Conclusion	11
Appendix	12

CITATIONS

Cases:	
Ball v. *United States*, 101 F. 2d 272, certiorari denied, 308 U. S. 563	10
Burgett v. *United States*, 80 F. 2d 151	8
Dowell v. *United States*, 86 F. 2d 120	10
Hansen v. *United States*, 67 F. 2d 613, certiorari denied, 291 U. S. 670	8
Jenkins v. *United States*, 86 F. 2d 123, certiorari denied, 300 U. S. 675	10
Morris v. *United States*, 96 F. 2d 731	8
McLaughlin v. *United States*, 74 F. 2d 506	8
Rosario v. *United States*, 106 F. 2d 844, certiorari denied, 308 U. S. 606	7, 10
Roskos v. *United States*, 130 F. 2d 751	10
Stulce v. *United States*, 128 F. 2d 327	10
United States v. *Bass*, 64 F. 2d 467	8
United States v. *Bollman*, 73 F. 2d 133	10
United States v. *Collins*, 61 F. 2d 1002	8
United States v. *Knott*, 69 F. 2d 907	8
United States v. *Towery*, 306 U. S. 324	11
Westling v. *United States*, 64 F. 2d 464	8
Statutes:	
Act of March 4, 1925, c. 553, § 2, 43 Stat. 1302	5
Act of May 29, 1928, c. 875, § 1, 45 Stat. 964	5
Act of July 3, 1930, c. 849, § 4, 46 Stat. 992	5, 8
Act of July 3, 1930, c. 863, §§ 1, 2, 46 Stat. 1016	2, 5
Joint Resolution of Jan. 28, 1935, c. 1, 49 Stat. 1, 38 U. S. C. § 445c	9, 13
World War Veterans' Act, 1924, 43 Stat. 607, as amended:	
Section 19, 38 U. S. C. § 445	5, 6, 8, 9, 12
Section 305, 38 U. S. C. § 516	5, 13

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 226

WILLIAM A. DYER, ET AL., PETITIONERS,

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The District Court of the United States for the District of Columbia did not render an opinion. The opinions in the Court of Appeals (R. 79–83) are reported at 154 F. 2d 14.

JURISDICTION

The judgment of the Court of Appeals was entered on March 4, 1946 (R. 84). A petition for rehearing was denied on March 22, 1946 (R. 85). The petition for a writ of certiorari was filed on June 22, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Section 19 of the World War Veterans' Act, 1924, as amended, provides that the running of the six-year period of limitation upon suit provided thereby is suspended for the period between the filing of a claim for insurance benefits in the Veterans' Administration and the denial of such claim by the Administrator of Veterans' Affairs.[1] The question presented is whether a letter from the Veterans' Bureau to the claimant's attorneys, signed by an official "For the Director" and containing a statement that "insurance is not payable," constituted a denial of the claim so as to terminate a suspension of the period of limitations.

STATUTES INVOLVED

The pertinent provisions of the statutes involved appear in the Appendix, pp. 12–14.

STATEMENT

Everett Dyer, while in the military service of the United States in the first World War, applied for and was granted two $5,000 contracts of War Risk yearly renewable term insurance (R. 2, 14). The policies lapsed for nonpayment of the premium

[1] Under Executive Orders pursuant to Section 1 of the Act of July 3, 1930, c. 863, 46 Stat. 1016, 38 U. S. C. § 11, the Veterans' Bureau was succeeded by the Veterans' Administration and the Director of the Bureau by the Administrator of Veterans' Affairs.

due June 1, 1919 (R. 2, 14). The insured died on May 18, 1922 (R. 2–3, 21). On December 31, 1924, the attorneys for Minnie Dyer, the insured's mother and one of the beneficiaries under the policies, wrote a letter which advised the Veterans' Bureau of the insured's death and that Mrs. Dyer had requested them to apply "for a reinstatement of Life Insurance which he carried at the time of his discharge from the army" (R. 2, 11–12, 20–21). They asked that the letter be considered "a sufficient application to entitle Mrs. Dyer to save her claim" and that the necessary blanks for making formal application be mailed to them "if Mrs. Dyer is entitled to have this insurance reinstated" (R. 12, 21).

On January 12, 1925, the Central Office Board of Appeals of the Veterans' Bureau rendered a decision to the effect that the insured had not suffered from any compensable disability until April 20, 1920, but that his disability was total and permanent from that date until his death (R. 22–24).

On January 31, 1925, the Bureau replied to the attorneys' letter, advising "that action on this case has been held in abeyance pending a decision from the Board of Appeals" and that under that decision additional accrued compensation was due the insured's estate in the amount of approximately $490, which, upon receipt of letters of administration, would be paid to his

administrator (R. 12–13, 23–24). After adding that Mrs. Dyer's claim for dependency compensation was still under consideration (R. 13, 24), the letter stated:

> You are still further advised that the insurance of the above captioned [the insured] lapsed for non-payment of premium July 3, 1919, and therefore, insurance is not payable (R. 13, 24).

The letter was signed by an acting assistant director "For the Director" (R. 13, 24).

No further action was taken by anyone concerning the insurance in question until September 26, 1932, when a formal claim for the insurance proceeds was made (R. 25–30). The Insurance Claims Council found that "on the evidence now of record the veteran is not shown to have been permanently and totally disabled, for insurance purposes, at any time while the insurance contract was in force" and denied the claim (R. 31–32). Thereafter, on request for reconsideration made on behalf of the claimants, the claim was reconsidered and again, on April 26, 1939, denied (R. 34–41).

On December 28, 1942, petitioners brought this suit to recover the death benefits under the insurance policies (R. 1–5), basing their claim upon allegations to the effect that when the insurance lapsed the insured was "suffering from a compensable disability" for which he

had not then received compensation, and that there was a sufficient amount due him at the time of death to have revived the policies under Section 305 of the World War Veterans' Act, 1924, as amended, *infra,* p. 13 (R. 2–3). Respondent answered (R. 6–10), defending on the merits (R. 6–10) and on the ground that the "action was not commenced within the time required by Section 19, World War Veterans' Act, 1924, as amended July 3, 1930 (Section 445, Title 38, U. S. C.)" (R. 10) and praying that the "action be dismissed for want of jurisdiction" (R. 10).

The district court sustained the Government's "plea of limitations", found the court was "without jurisdiction", and dismissed the suit (R. 74). On appeal, the court below, one judge dissenting (R. 81–83), affirmed the judgment of the district court (R. 79–81, 84).

ARGUMENT

Section 19 of the World War Veterans' Act, 1924, as amended,[2] *infra,* pp. 12–13, provides that an action may be brought against the United States on a war risk insurance claim "In the event of disagreement as to claim * * * between the Veterans' Administration and" the claim-

[2] Act of June 7, 1924, c. 320, § 19, 43 Stat. 612; Act of March 4, 1925, c. 553, § 2, 43 Stat. 1302; Act of May 29, 1928, c. 875, § 1, 45 Stat. 964; Act of July 3, 1930, c. 849, § 4, 46 Stat. 992; Act of July 3, 1930, c. 863, §§ 1, 2, 46 Stat. 1016; 38 U. S. C. 445.

ants; that such action may not be brought after "six years after the right accrued for which the claim is made"; but that "this limitation is suspended for the period elapsing between the filing in the Veterans' Administration of the claim sued upon and the denial of said claim by the Administrator of Veterans' Affairs." The question presented is whether the letter written on January 31, 1925, by the Veterans' Bureau, in the name of the Director of the Bureau, advising the claimant's attorneys that no insurance was payable on the claim (R. 12–13, 23–24) constituted a denial of the claim so as to terminate the suspension of the limitation period provided by Section 19 of the World War Veterans' Act, 1924, as amended. It is clear that the attorneys' letter (R. 11–12, 20–21) to which the January 31, 1925, letter replied "was a claim for insurance" (R. 80; Pet. 16–17). It is equally clear that if the January 31 letter "constituted a denial of this claim * * * the statute of limitations [provided by Section 19 of the World War Veterans' Act, 1924, as amended] applies and the order of the court below must be affirmed" (R. 80).

The court below held that the Veterans' Bureau's reply of January 31, 1925, to the claimant's attorneys that the policy had lapsed and that "insurance is not payable" (R. 13, 24) was, in the language of Chief Justice Groner, "an unequivocal answer to the query whether there

was existing or reinstatable insurance, and likewise a definite 'denial' of any right to make claim thereto. In this respect it was both responsive to the request and a denial of it. And that the position of the Bureau in this regard was so understood by claimants seems to us perfectly clear from the fact that nothing more happened in relation to the claim from that time for a period of seven years. It would be trifling with words, we think, to say that the Bureau's answer * * * was not enough to constitute a denial of the claim and hence to create a disagreement within the meaning of the statute" (R. 81). The court accordingly held that "the limitation of the statute is a complete bar to the action" (R. 81) and held the doctrine of "continued negotiations," applied by the court below in *Rosario* v. *United States,* 106 F. 2d 844, 848 (App. D. C.), certiorari denied, 308 U. S. 606, inapplicable because there was nothing to show that any of the parties considered the claim pending during the seven years which elapsed between the filing of the first and second claims (R. 81). The decision below is plainly correct in each of its aspects.

1. Clearly the Bureau's letter of January 31, 1925, signed by an Acting Assistant Director "For the Director" and stating that "insurance is not payable" on the claim made (R. 12–13, 23–24) was responsive to and a denial, after a consideration of the merits (R. 12, 22–23), of the insurance

claim asserted in the letter to which it was replying.[3] The failure of the claimants as well as of the Bureau to take further action with respect to the claim for more than seven years is consistent only with the view that the Bureau's letter constituted such a denial. Certainly the Government could not have successfully maintained a position to the contrary, had the claimant brought suit relying upon that letter as a "disagreement." *Westling* v. *United States,* 64 F. 2d 464, 466 (C. C. A. 9); *United States* v. *Bass,* 64 F. 2d 467, 468–469 (C. C. A. 7); *Hansen* v. *United States,* 67 F. 2d 613, 614 (C. C. A. 7), certiorari denied, 291 U. S. 670; *McLaughlin* v. *United States,* 74 F. 2d 506, 507 (C. C. A. 10).[4]

Petitioners assert (Pet. 19–20), however, that there was no "disagreement" since, as that term was defined in the 1930 amendment of Section 19

[3] The distinction which petitioners seek to draw (Pet. 13) between a denial of the claim and a denial of the right to make a claim is, we believe, without substance.

[4] The cases cited by petitioners (Pet. 2, 15) as in conflict with the decision below do not support their argument. In *Morris* v. *United States*, 96 F. 2d 731 (C. C. A. 5), and *Burgett* v. *United States*, 80 F. 2d 151 (C. C. A. 7), the Veterans' Administration in each case sought additional information in support of the claim made. In *United States* v. *Knott*, 69 F. 2d 907 (C. C. A. 6), the letter which was asserted to evidence the necessary "disagreement" was merely "a courteous answer" to a Senator's inquiry made on behalf of the claimant. In *United States* v. *Collins*, 61 F. 2d 1002 (C. C. A. 4), it was held that there was no "disagreement" since no appropriate claim had been made.

of the World War Veterans' Act, 1924 (46 Stat. 992, 993; *infra,* pp. 12–13), it was necessary for the denial of the claim to be "by the director or someone acting in his name on an appeal to the director." Even assuming the applicability of the 1930 amendment, it should be noted, first, that the Bureau's letter of January 31, 1925 (R. 12–13, 23–24) was written after the decision of January 12, 1925, of the Central Office Board of Appeals (R. 22–23) and specifically referred to that decision (R. 12, 23), and that the letter was signed in the name of the Director (R. 13, 24). But the assumption cannot be made, because the "disagreement" in the instant case occurred before the 1930 amendment and therefore cannot be governed thereby. Moreover, the 1930 amendment was clarified retroactively by the Joint Resolution of January 28, 1935 (49 Stat. 1, c. 1; *infra,* pp. 13–14), which provided that a denial by the Administrator "or any employee or agency of the Veterans' Administration heretofore or hereafter designated therefor by the Administrator shall constitute a disagreement for the purposes of section 19 of the World War Veterans' Act * * *."

2. Since the Bureau's letter of January 31, 1925 was a "disagreement", the six-year period of limitations provided by Section 19 of the World War Veterans' Act, 1924, as amended, *infra,* pp. 12–13, clearly bars the instant suit. The suspension of

limitations, also provided for by that section, was terminated by that letter. The claim was not re-asserted until more than seven years later (R. 25–31). The purpose of the statute would be defeated if the subsequent administrative reconsideration of the claim were permitted to lift the bar of the statute after there had been a "disagreement" upon which suit could have been brought. *Roskos* v. *United States,* 130 F. 2d 751 (C. C. A. 3); *Stulce* v. *United States,* 128 F. 2d 327 (C. C. A. 8); *Ball* v. *United States,* 101 F. 2d 272 (C. C. A. 6), certiorari denied, 308 U. S. 563; *Jenkins* v. *United States,* 86 F. 2d 123 (C. C. A. 5), certiorari denied, 300 U. S. 675; *Dowell* v. *United States,* 86 F. 2d 120 (C. C. A. 5). Nor is the doctrine of "continued negotiations", applied in *Rosario* v. *United States,* 106 F. 2d 844, 848 (App. D. C.), certiorari denied, 308 U. S. 606, and *United States* v. *Bollman,* 73 F. 2d 133 (C. C. A. 8),[5] applicable here, since in those cases, as distinguished from the situation in the instant case, the negotiations relied upon were begun before the period of limitations had expired (See R. 81). Contrary to petitioners' assertion (Pet. 21–22) that "as this statute is remedial in nature a liberal construction should be given it in favor of" claimants, this Court has held that the statute of limitations

[5] These cases are asserted by petitioners (Pet. 2, 21) to be in conflict with the decision below.

here involved was "undoubtedly intended as one of repose." *United States* v. *Towery,* 306 U. S. 324, 330.

CONCLUSION

The decision below is correct, there is no conflict, and the question presented is not one of general importance. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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JULY 1946.

APPENDIX

Section 19 of the World War Veterans' Act, 1924, 43 Stat. 612, as amended,[1] 38 U. S. C. § 445, provides, in part, as follows:

> In the event of disagreement as to claim, including claim for refund of premiums, under a contract of insurance between the Veterans' Administration and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the district court of the United States for the District of Columbia or in the district court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. * * *
>
> No suit on yearly renewable term insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made or within one year after July 3, 1930, whichever is the later date, and no suit on United States Government life (converted) insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided,* That for the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded:

[1] Successive amendments are listed in note 2, *supra*, p. 5.

> *Provided further,* That this limitation is suspended for the period elapsing between the filing in the Veterans' Administration of the claim sued upon and the denial of said claim by the Administrator of Veterans' Affairs. * * *

Section 305 of the World War Veterans' Act, 1924, 43 Stat. 626, as amended, 38 U. S. C. § 516, provides, in part, as follows:

> Where any person has heretofore allowed his insurance to lapse, or has canceled or reduced all or any part of such insurance, while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 302 of the War Risk Insurance Act as amended by Act December 24, 1919, c. 16, 41 Stat. 371 would purchase if applied as premiums when due, shall not be considered as lapsed, canceled, or reduced; and the Veterans' Administration is hereby authorized and directed to pay to said soldier, or his beneficiaries, as the case may be, the amount of said insurance less the unpaid premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law: * * *.

The Joint Resolution of January 28, 1935, c. 1, 49 Stat. 1, 38 U. S. C. § 445c, "To clarify the

definition of disagreement in section 19, World War Veterans' Act, 1924, as amended," is as follows:

> That a denial of a claim for insurance by the Administrator of Veterans' Affairs or any employee or agency of the Veterans' Administration heretofore or hereafter designated therefor by the Administrator shall constitute a disagreement for the purposes of section 19 of the World War Veterans' Act, 1924, as amended (U. S. C., Supp. VII, title 38, sec. 445). This resolution is made effective as of July 3, 1930, and shall apply to all suits now pending against the United States under the provisions of section 19 of the World War Veterans' Act, 1924, as amended, and any suit which has been dismissed solely on the ground that a denial as described in this resolution did not constitute a disagreement as defined by section 19 may be reinstated within three months from the date of enactment of this resolution.

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